IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 974 OF 2004

Dilip Ramdas Manjrekar. ... Appellant.
Versus.
Omex Builders & Contractors
and others. ... Respondent.

Shri P.M.Pradhan for the Appellant.

Shri Bhate for the Respondents Nos.1 and 2.

Shri V.K.Damle for Respondents 5(a) & 5(b).

CORAM : ABHAY S. OKA, J.

DATED : 21st March, 2005.

P.C.:

1. On the prayer made by Shri Pradhan, learned Counsel appearing for the Appellant, the names of Respondents Nos.3 and 4 are allowed to be deleted as they are dead.

2. Heard the learned Counsel appearing for the parties.

3. Admit. The Respondents waive service.

4. After arguing the matter for sometime, the learned Counsel appearing for the Respondents Nos.1 and 2 pointed out that the Respondent Nos.1 and 2 intend to file a substantive suit for possession and other reliefs in respect of the suit premises. He, therefore, submits that if the Appellant is ready and willing to give an undertaking that he will not create any third party

interests and will not part with possession of the suit premises, the Respondents Nos.1 and 2 have no objection if the order of appointing the Court Receiver is set aside by reserving a right in favour of the Respondents Nos.1 and 2 to file a substantive suit and to pray for appointment of the Court Receiver in respect of the suit premises. The learned Counsel appearing for the legal representatives of Respondent No.5 has supported the learned Counsel appearing for the Respondents Nos.1 and 2. Shri Pradhan on instructions of the Appellant states that till disposal of the suit in the trial Court filed by the Respondent No.5, the Appellant will not create any third party interests and will not part with possession of the suit premises in favour of any third party. The said undertaking is accepted.

5. In view of what is recorded above, I pass the following order:

(i) The impugned Judgment and order dated 24th August 2004 is quashed and set aside. The Notice of Motion No.3709 of 2003 is dismissed.

(ii) The undertaking of the Appellant given trough his Counsel is accepted.

(iii) This order will not preclude the

Respondents Nos.1 and 2 from filing a substantive suit in respect of the suit premises for claiming appropriate reliefs and from applying for appointment of Court Receiver and other interim reliefs in the said suit.

(iv) If any such suit is filed and any application for interim reliefs is made, the concerned Court will decide the same on its own merits.

(v) The hearing of the suit filed by the Respondent No.5 is expedited and the trial Court will dispose of the same on or before 31st December 2005.

(vi) All contentions of the parties are expressly kept open.

(vii) Parties and the concerned Court to act on an authenticated copy of the order.

Judge.